



**UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/085,298 05/27/98 GOLDBERG

R TI-25588

023494 MM91/0309
TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS TX 75265

EXAMINER

EATON, K
ART UNIT PAPER NUMBER

2823
DATE MAILED:

03/09/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory Action

Application No.

09/085,298

Examiner

Kurt M. Eaton

Applicant(s)

GOLDBERG, RICHARD TODD

Art Unit

2823

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 14 February 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search. (see NOTE below);
 - (b) ☐ they raise the issue of new matter. (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

4. ☐ Applicant's reply has overcome the following rejection(s): _____
5. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see ATTACHMENT TO ADVISORY ACTION.
7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):
- Claim(s) allowed: _____
- Claim(s) objected to: _____
- Claim(s) rejected: 1-5,7-10 and 13.
- Claim(s) withdrawn from consideration: _____
9. ☐ The proposed drawing correction filed on _____ a) ☐ has b) ☐ has not been approved by the Examiner.
10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
11. ☐ Other:

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ATTACHMENT TO ADVISORY ACTION

1. Applicant traverses the rejection of claims 1-4, 7, 8, and 13 as unpatentable over the Nozaki reference because, allegedly, the examiner stated "that it would have been obvious for one skilled in the art to incorporate oxygen into the gas, since the thermally nitrided portion of the silicon containing structure also contained oxygen". The examiner respectfully submits that nowhere in the final Office Action was it stated that "it would have been obvious for one skilled in the art to incorporate oxygen into the gas, since the thermally nitrided portion of the silicon containing structure also contained oxygen". Moreover, the final Office Action stated "It would have been obvious to one of ordinary skill in the art at the time the invention was made that since the thermally nitrided portion of the silicon containing structure also contained oxygen, oxygen must have been incorporated within the nitrogen containing gas...". There is a difference between applicants interpretation of the final Office Action and what was actually stated. In the former instance, it is asserted that oxygen is incorporated into a gas - thus implying that oxygen was not present within the nitrogen containing gas. In the latter instance, oxygen is naturally present within the nitrogen containing gas, as is evidenced from the data given in Table I.


Conclusion

2. Paper related to this application may be submitted directly to Art Unit 2823 by facsimile transmission. Papers should be faxed to Art Unit 2823 via the Art Unit 2823 Fax Center located in Crystal Plaza 4, room 4C23. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (15 November 1989). The Art Unit 2823 Fax Center number is

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(703) 308-7722 or -7724. The Art Unit 2823 Fax Center is to be used only for papers related to Art Unit 2823 applications.

Any inquiry concerning this communication of earlier communication from the examiner should be directed to **Kurt Eaton** at (703) 305-0383 and between the hours of 8:00 AM to 4:00 PM (Eastern Standard Time) Monday through Friday or by e-mail via kurt.eaton@uspto.gov.


LONG PHAM
PRIMARY EXAMINER